

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On its Own Motion)	
)	Docket No. 01-0662
Investigation concerning Illinois Bell)	
Telephone Company's compliance)	
With Section 271 of the)	
Telecommunications Act of 1996)	

**REPLY OF AT&T COMMUNICATIONS OF ILLINOIS, INC. AND
WORLDCOM, INC. TO RESPONSES BY STAFF, MCLEOD AND TDS
METROCOM TO AMERITECH'S MOTION TO ESTABLISH PROCEDURAL
SCHEDULE**

AT&T Communications of Illinois, Inc. ("AT&T") and WorldCom, Inc. ("WorldCom"), by and through their attorneys, hereby reply to the response filed by Staff of the Illinois Commerce Commission ("Staff") and the joint response filed by McLeodUSA Telecommunications Services, Inc. ("McLeod") and TDS Metrocom, LLC ("TDS Metrocom") to the motion filed in the above-captioned matter on November 21, 2002 by Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") seeking to establish a procedure and a schedule to govern Phase 2 of Docket 01-0662.¹

AT&T and WorldCom agree with Staff, McLeod and TDS Metrocom that it is premature at this time to establish a schedule for Phase 2 of this proceeding or, for that matter, any additional phases. BearingPoint will issue interim reports in late December, but testing of Ameritech's Operations Support Systems ("OSS") and performance metrics is not scheduled to be completed until March 28, 2003. And, notwithstanding the

¹ CIMCO Communications, Inc., XO of Illinois, Inc., Forte Communications, Inc., Globalcom, Inc. and Novacon LLC filed a joint response noting that the Commission should employ contested case procedures and requesting that Ameritech's Motion be denied. AT&T and WorldCom agree and in this respect urge the Commission to remain faithful to its Initiating Order in this proceeding.

question of whether the Ameritech-commissioned Ernst & Young performance metrics report is relevant to this proceeding, Ameritech acknowledges that any filing based on the Ernst & Young report would not be ready until mid-January 2003. Moreover, while the Illinois Commerce Commission (“Commission”) has not yet voted on the Administrative Law Judge’s (“ALJ’s”) Phase 1 recommendations, the ALJ’s Proposed Phase 1 Interim Order issued December 6, 2002 (“Proposed Phase 1 Interim Order”) identifies numerous and fact-intensive problems and concerns that Ameritech Illinois must address in Phase 2 or a subsequent phase of this proceeding. As such, Staff is correct when it states that until the Commission issues its final recommendation in Phase 1A setting forth the areas of noncompliance to be addressed in Phase 2 (or a subsequent phase), it is premature to set a Phase 2 procedural schedule. As a general matter, however, AT&T and WorldCom agree with Staff that it is impossible to address Phase 2 issues in three months and that, even with an expedited schedule, Phase 2 will take at least five months.²

As noted by AT&T, WorldCom, Staff, TDS Metrocom and McLeod in their respective responses, Ameritech’s proposed schedule envisions a second phase that addresses OSS and performance metric issues only. AT&T and WorldCom agree with Staff, TDS Metrocom and McLeod that, at a very minimum, the issues and concerns identified by the Proposed Order (and, as AT&T and WorldCom will explain in their exceptions briefs, many more) must be addressed in Phase 2 or a subsequent phase. In

² Staff Response, p. 3. Staff includes a schedule and an alternative schedule based on information known to Staff at the time it filed its response. Under Staff’s alternative schedule, there would be no formal hearings and Phase 2 briefing would be completed by April 8, 2003. AT&T and WorldCom respectfully submit that such a schedule is unrealistic and unworkable under any circumstances but especially so in light of the ALJ’s findings in the Proposed Phase 1 Interim Order.

fact, McLeod and TDS Metrocom expressly state: “Ameritech’s proposed Phase 2 process and schedule do not encompass issues of demonstrating Ameritech’s compliance with or satisfaction of any open items from the Phase 1 interim order; therefore, a separate process and schedule will need to be established to address closure of remaining Phase 1 issues.” Response of McLeod and TDS Metrocom, p. 1.

Staff, at pages 4-6 of its response, thoroughly discusses numerous issues upon which evidence must be submitted in the next phase or phases. Indeed, the Administrative Law Judge herself clearly contemplates a more expansive and factual-intensive second phase than does Ameritech. The ALJ’s Proposed Phase 1 Interim Order issued in this docket on December 6, 2002 makes one thing perfectly clear. Ameritech Illinois bears the burden of demonstrating numerous, fact-specific and fact-intensive items. While AT&T and WorldCom will file exceptions indicating that Ameritech’s burden of proof in Phase II ought be much broader than even that determined by the Phase 1 Proposed Order, the following is just an excerpt of that list:

Page 73 -- Ameritech Illinois must demonstrate that it is in compliance with the Commission’s Order in ICC Docket No. 99-0615. While the Phase 1A Proposed Order provides that Ameritech Illinois “will respond to this assertion in its exceptions brief”, nothing Ameritech Illinois says in its exceptions brief is or becomes part of the evidentiary record. As such, the record in Phase 1A demonstrates that Ameritech’s collocation tariff does not comply with the plain language of the Commission’s Order in ICC Docket No. 99-0615. Any additional evidence Ameritech wishes to put forth to meet its burden of proving that it complies with checklist item (i) must, by definition and necessity, be provided in Phase II.

Page 74 -- Ameritech must demonstrate in Phase II that the interim collocation rates it has tariffed as a result of the Commission’s Order in ICC Docket No. 99-0615 are reasonable. This is, of course, akin to a cost/rate analysis and could potentially require – as the Phase 1A Proposed Order expressly recognizes -- factual testimony regarding why costs differ from one state to another.

Page 164 -- The Commission's final review of line loss performance should come in Phase II. One need review no more than the Phase 1A testimony and the Z-Tel complaint case – ICC Docket No. 01-0260 – to be utterly convinced that a comment proceeding will not scratch the surface of the information the Commission needs to ensure that the recurring line loss problem has been (or has not been) put to rest.

Pages 165-166 -- Ameritech will be required in Phase II to demonstrate that: (a) its UNE offerings are reasonably available via tariff, the GIA or agreement and can generally be opt-into without unnecessary restrictions; (b) its UNE rates are clearly defined by providing examples of typically requested UNE arrangements and explaining how services and products are billed under tariffs, the GIA, or agreements; (c) its UNE rates fall reasonably within a range of TELRIC compliance, meaning that, for each “interim” and “not-yet-investigated” UNE rate, AI must demonstrate that the rate is either at a level found to be TELRIC compliant by the Commission or that the rate falls within the “zone of reasonableness”. This “zone of reasonableness” might be demonstrated by comparing AI's rates to comparable elements or services that have been found to be TELRIC compliant in SBC states that have received Section 271 approval. Such comparisons would take into account cost differences between states; (d) its UNE “combination rates,” i.e., UNE-P and EEL rates, are clearly defined. This might be accomplished by providing examples of typically requested UNE combinations (e.g., common special access to UNE migrations, common new UNE combination requests, common reconfigurations requests, and EELs scenarios that would allow users enough information to determine how Ameritech applies rates to alternative but similar combinations) and explaining how those services and products would be billed under its tariffs and/or interconnection agreements and GIA; (e) its UNE combination rates fall reasonably within a range of TELRIC compliance. This might be accomplished by demonstrating, for each UNE combination rate it charges, that the rate is at a level that has been found to be TELRIC compliant by the Commission or, if the rate is interim (either because the Commission ordered an interim rate or because the TELRIC compliance of the rate has never been explicitly addressed by the Commission), proving that the rate is in a zone of reasonableness by, for example, comparing those rates to rates in other comparable states whose have been found to be TELRIC compliant, as indicated above; and (f) Ameritech Illinois must prove that it has well defined, concrete, and binding terms and conditions that define provisioning intervals for UNE combinations, in particular loop/transport combinations, both those provided as pre-existing and new combinations.

Page 218 -- Whether Ameritech has implemented a single order process for line splitting and whether it in fact functions properly.

Page 220 -- Ameritech must demonstrate that the tariff it filed in response to the Commission's orders in ICC Docket No. 00-0393 complies with those orders.

Page 243 -- The Commission will require Ameritech to make a showing of the steps and timeframes by which it is implementing its RACF commitment.

Page 398 -- Whether Ameritech has met its burden of proof as to its NID installation requirements.

Because TDS Metrocom and McLeod assume that Phase 1A compliance issues will be addressed in a third phase, they advocate deferring a process and schedule for Phase 2 until, at a minimum, the BearingPoint and Ernst & Young reports have been filed and the parties have had a reasonable amount of time to review them. Response of TDS Metrocom and McLeod, p. 2. Thus, the timeframes and proposal set forth by TDS Metrocom and McLeod should only be considered as an alternative if Phase 2 is limited to addressing third-party OSS testing results. If Phase 2 includes new issues that have arisen since Phase 1A as well as compliance issues, as contemplated by the Commission's Initiating Order³ and the ALJ's Proposed Phase 1 Interim Order, the TDS Metrocom and McLeod proposal is unworkable and cannot realistically be considered.

TDS Metrocom and McLeod contend that so long as Phase 2 only involves the BearingPoint and Ernst & Young reports and so long as the Commission does not see the need for "evidence" to support its conclusions, it does not have an objection to using a less formal paper proceeding contemplated by Ameritech Illinois. TDS Metrocom and McLeod candidly admit that their position is driven by "the reduced resource requirement

³ *Illinois Commerce Commission on its own Motion, Investigation concerning Illinois Bell Telephone Company's compliance with Section 271 of the Telecommunications Act of 1996*, Order Initiating Investigation, Docket No. 01-0662, issued October 24, 2001 ("Initiating Order").

compared to a formal hearing process.” Response of TDS Metrocom and McLeod, p. 4. TDS Metrocom and McLeod also candidly admit, however, that the traditional hearing process is the way to go to the extent the Commission requires “evidence” to support its determinations.

As AT&T and WorldCom carefully and thoroughly stated in their joint response and as Staff has convincingly demonstrated in its response, there is no serious question, based on the Commission’s Initiating Order, that it wants “evidence” to support its determinations gathered via the traditional hearing process. Staff Response, pp. 7-8. Moreover, while AT&T and WorldCom do not doubt that McLeod and TDS Metrocom are resource constrained, the Commission cannot let resource constraints stand in the way of full, fair and complete evidentiary record upon which to consult with and make recommendations to the FCC.

Finally, AT&T and WorldCom wholeheartedly agree with Staff. TDS Metrocom and McLeod that full discovery rights with an expedited turnaround time is absolutely essential to any schedule set for Phase 2 and any subsequent phases. Staff Response, p. 6. The fact-intensive nature of each and every item identified for consideration in Phase 2 and subsequent phases requires no less. In addition, it is imperative that whatever schedule is established for Phase 2 provide an opportunity for Staff and other parties to reply to Ameritech’s arguments regarding Staff’s and other parties’ positions (Staff Response, p. 9) and provide for the issuance of an Administrative Law Judge’s proposed order and the opportunity for parties to file exceptions thereto. Due process commands that these minimum requirements be incorporated into any schedule ultimately adopted

for Phase 2. Certainly AT&T and WorldCom have no objection to setting a schedule via a status hearing, as Staff recommends, once the time to do so is ripe.

For all of the foregoing reasons, the ALJ and the Commission should deny Ameritech's Motion to Establish a Procedural Schedule for Phase 2. In denying Ameritech's Motion, the ALJ and the Commission should make clear that contested case procedures will be followed in Phase 2 and that a schedule for addressing Phase 2 issues will be set at a status hearing to be convened in 2003, after the BearingPoint interim OSS and metric testing reports are issued and after the Commission votes on the ALJ's Proposed Phase 1 Interim Order. In the alternative, and at a minimum, the ALJ and the Commission should adopt the schedule proposed by AT&T and WorldCom in their joint response filed on December 5, 2002.

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Respectfully submitted,

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